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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
) IB Docket No. 98-21
Policies and Rules for the)
Direct Broadcast Satellite Service)

COMMENTS OF AMERITECH

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Ameritech New Media, Inc. ("Ameritech")¹ respectfully submits the following comments on the DBS ownership issues raised in the Notice of Proposed Rulemaking ("NPRM") released in the above-captioned docket on February 26, 1998.²

I. Introduction and Summary.

In regulating cable television, the Commission has consistently sought to promote consumer choice and effective competition in the multichannel video programming distribution ("MVPD") market, and, moreover, has "encouraged the development of DBS spectrum in precisely that context."³ Over the past year, the Commission has taken

¹ Ameritech New Media, Inc., which is a subsidiary of Ameritech Corp., began operation as a competitive cable operator in May 1996, currently has 71 franchises, serves 48 communities in the Chicago, Detroit, Cleveland and Columbus area markets, and is the largest cable overbuilder in the country.

² *In the Matter of Policies and Rules for the Direct Broadcast Satellite Service*, IB Docket No. 98-21, Notice of Proposed Rulemaking, FCC 98-26 (rel. February 26, 1998).

³ *Revision of Rules and Policies for the Direct Broadcast Satellite Service*, IB Docket No. 95-168, PP Docket No. 93-253, Report and Order, 11 FCC Rcd 9712, 9720 (1995) ("*DBS Auction Order*"); *Tempo Satellite, Inc.*, 7 FCC Rcd 2728, 2730 (1992) ("We have long anticipated that the DBS service, along with other multichannel video technologies, will provide an effective competitive alternative to cable television) (citing *1990 Cable Report*, 5 FCC Rcd 4962, 5031 (1991)).

several critical steps necessary to eliminate barriers to competitive entry in the MVPD market.⁴

This proceeding too could have a profound impact on competition in the MVPD market because it will determine whether DBS can, on its own, or in combination with other new entrants (such as cable overbuilders, SMATV operators, *et cetera*), provide a significant competitive alternative to cable television, or, instead, be relegated to providing a mere complement to existing cable services, and thereby potentially further entrenching incumbent cable monopolists. Accordingly, in considering whether to adopt rules or policies pertaining to DBS ownership, the Commission should focus on the potential effects of combinations or transactions that affect DBS ownership on the ability of DBS providers and other new entrants, like Ameritech, to provide meaningful competition to incumbent cable operators. As such, the Commission's objective should be to ensure that any policies or rules adopted in this proceeding prevent combinations or transactions that may undermine the competitive potential of DBS services, or further entrench incumbent cable monopolists.

At the same time, the Commission must recognize that DBS is still in the early stages of its development, and that, as a result, any broad-brush, generally applicable rules could unnecessarily prohibit or restrict transactions that could promote competition

⁴ See e.g. *Implementation of the Cable Television Consumer Protection and Competition Act of 1992; Petition for Rulemaking of Ameritech New Media, Inc. Regarding Development of Competition and Diversity in Video Programming Distribution and Carriage*, CS Docket No. 97-248, RM No. 9097, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 97-415 (rel. Dec. 18, 1997); *Telecommunications Services Inside Wiring, Customer Premises Equipment; Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Cable Home Wiring*, CS Docket No. 95-184, MM Docket No. 92-260, FCC 97-376 (rel. October 17, 1997); *Star Lambert and Satellite Broadcasting and Communications Association of America; Petition for Declaratory Ruling under 47 C.F.R. § 1.4000*, CSR 4913-0, Memorandum Opinion and Order, FCC 97-1554 (rel. July 22, 1997).

and consumer choice in MVPD markets. Accordingly, the Commission should decline to adopt general rules governing DBS ownership and cross-ownership with other entities, and retain regulatory flexibility to address specific competition and public interest concerns related to DBS ownership on a case-by-case basis. In conducting such a case-by-case analysis, the Commission should follow the analytical approach adopted in its decision authorizing the merger of Bell Atlantic and NYNEX,⁵ and assess whether, on balance, the anticompetitive effects of a proposed transaction outweigh any transaction-specific procompetitive benefits or efficiencies. If so, the proposed transaction should be prohibited.

II. Discussion.

- a. **The Commission should continue to address specific competition and public interest concerns related to DBS ownership on a case-by-case basis.**

In the NPRM, the Commission solicits comment on whether it should continue to address specific competition and public interest concerns related to DBS ownership on a case-by-case basis, or, alternatively, adopt general rules governing DBS ownership and cross-ownership with other entities.⁶ Ameritech believes that broad-brush, one-size-fits-all rules regulating DBS ownership are inappropriate because DBS is still largely in its infancy. As the Commission has acknowledged, in just a few short years, DBS has

⁵ *Applications of NYNEX Corporation and Bell Atlantic Corporation for Consent to Transfer Control of NYNEX Corporation and its subsidiaries*, File No. NDS-L-96-10, Memorandum Opinion and Order, 12 FCC Rcd 19985 (1997) (*Bell Atlantic/NYNEX Order*); *See also Acquisition of MCI Communications Corporation and British Telecommunications PLC*, GN Docket No. 96-245, Memorandum Opinion and Order, 12 FCC Rcd 15352 (1997) (*BT/MCI Order*); *Application of Motorola, Inc. and American Mobile Satellite Corporation for Consent to Transfer of Control of Ardis Company*, CWD No. 98-3, Memorandum Opinion and Order, DA 98-514 (rel. Mar. 16, 1998).

⁶ NPRM, FCC 98-26 at para. 58.

emerged as a significant alternative to incumbent cable television because of its widespread availability, large channel capacity and high picture quality.⁷ Despite these advantages, certain constraints may limit DBS's mass market appeal, and, therefore, its ability to compete effectively with incumbent cable operators.⁸ The DBS industry may, however, soon overcome these limitations through technological innovation, or through strategic alliances with other new entrants (including local phone companies, SMATV operators, and cable overbuilders). In addition, Congress is currently considering legislation that would enable satellite video providers to provide local broadcast television signals to subscribers.⁹ Accordingly, rather than adopt broad, inflexible DBS cross-ownership rules that could inadvertently limit DBS's potential, on its own or in combination with other technologies and video service providers, to become a significant competitive alternative to incumbent cable, the Commission should retain regulatory flexibility to address in specific cases competition and public interest concerns relating to DBS ownership. This approach would not only be consistent with the deregulatory objectives of the Telecommunications Act of 1996 ("1996 Act"),¹⁰ but also would permit the Commission to take into account technological developments and structural changes in the MVPD market that may affect DBS's competitiveness, as well as to assess the potential effects of transactions affecting DBS ownership on other new entrants.

⁷ *Fourth Annual Report*, FCC 97-423 at para. 11.

⁸ These constraints include the inability currently to carry local broadcast signals, relatively high upfront equipment and installation costs, and the need to purchase additional equipment to receive service on an existing television set.

⁹ *See* H.R. 3210, 105th Cong., 2d Sess. (1998).

¹⁰ Pub. L. No. 104-104, 110 Stat. 56 (1996).

Addressing DBS ownership issues on a case-by-case basis would not impose significant burdens on applicants and the Commission. In this regard, Ameritech agrees with Commissioner Furtchgott-Roth that “[t]here is no need for a general rule that has such a limited and distant applicability. . . . By virtue of the limited number of DBS orbital slots, such rules could be applied only a handful of times.”¹¹ Accordingly, the Commission should maintain its commitment to a flexible regulatory structure for DBS and continue to address DBS ownership issues on a case-by-case basis.

- b. In assessing transactions involving DBS ownership or other relationships, the Commission should follow the analytical approach adopted in its decision analyzing the Bell Atlantic/NYNEX merger.

In evaluating the competitive effects of a proposed transaction affecting DBS ownership, the Commission should follow the analytical approach adopted in the *Bell Atlantic/NYNEX Order*. This approach, which relies heavily on the Department of Justice and Federal Trade Commission *1992 Horizontal Merger Guidelines*,¹² is based on generally accepted economic principles relating to market analysis.

Under the *Bell Atlantic/NYNEX* approach, the Commission’s analysis consists of four steps. First, the Commission defines the relevant product and geographic markets in which to analyze a proposed transaction.¹³ Second, the Commission identifies current

¹¹ NPRM, FCC 98-26, Separate Statement of Commissioner Harold W. Furtchgott-Roth (noting that “[a]dopting a general rule would require [the Commission] to predict and make hypothetical policy judgments; yet a thorough analysis of specific situations as they arise would take little, if any, additional time”).

¹² *1992 Horizontal Merger Guidelines*, 4 Trade Reg. Rep. (CCH) ¶ 13,104 (1992) (“*Merger Guidelines*”).

¹³ *Bell Atlantic/NYNEX*, 12 FCC Rcd at 20008, 20014.

and potential participants in each relevant market, particularly those likely to have a significant competitive effect on the relevant markets.¹⁴

Third, the Commission evaluates the effects of the proposed transaction on competition in the relevant markets.¹⁵ In evaluating the competitive effects of a proposed transaction, the Commission should consider whether it is likely to enhance or maintain the market power of the parties to the transaction (such as by removing assets that could otherwise be used to promote competition), and whether the proposed transaction would impair the Commission's ability to establish and enforce rules necessary to constrain the exercise of market power until competition is sufficiently developed to justify deregulation.¹⁶ The Commission should also consider whether the proposed transaction will result in any transaction-specific procompetitive benefits or efficiencies such as reducing costs, enhancing productivity, improving incentives for innovation, or strengthening new entrants by allowing them to combine complementary products or services in a way that will better enable them to challenge the market power of the incumbent, as well as whether the transaction will support the general policies of market-opening and barrier-lowering that underlie the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act")¹⁷ and the 1996 Act.¹⁸

¹⁴ *Id.* at 20008.

¹⁵ *Id.* at 20008-09.

¹⁶ *Id.* at 20009

¹⁷ Pub. L. No. 102-385, 106 Stat. 1460 (1992).

¹⁸ *Bell Atlantic/NYNEX*, 12 FCC Rcd at 20009 (noting that, in an appropriate case, the Commission will also examine whether a proposed merger has vertical effects that enhance market power). *See also Revision to Horizontal Merger Guidelines Issued by the U.S. Department of Justice and the Federal Trade Commission*, April 8, 1997 ("The Agency will consider only those efficiencies likely to be

Finally, the Commission weighs the competing procompetitive and anticompetitive effects to determine whether the parties to the transaction have demonstrated that, on balance, it is likely to promote competition in the relevant markets.¹⁹

- i. Although the Commission should not, at this time, define relevant markets in which to assess DBS ownership issues, if it does, local MVPD markets currently appear to be relevant markets in which to assess such issues.

The first step in analyzing the competitive effects of transactions affecting DBS ownership is to define the relevant product and geographic markets affected by the transaction. Because the Commission should address DBS ownership issues on an *ad hoc* basis, it is not only unnecessary, but also potentially contrary to Commission objectives, to attempt to define in advance the relevant markets in which to assess DBS ownership issues. Any such attempt might limit the Commission's ability to account for the dynamic technological, structural, and legislative changes affecting MVPD markets generally, and DBS specifically, and could, as a result, unnecessarily prohibit or restrict transactions that could promote competition and consumer choice in video services markets.

If the Commission nevertheless decides to define the relevant markets in which to assess DBS ownership issues in this proceeding, application of the Commission's

accomplished with the proposed merger and unlikely to be accomplished in the absence of either the proposed merger or another means having comparable anticompetitive effects. . . . The Agency will not deem efficiencies to be merger-specific if they could be preserved by practical alternatives that mitigate competitive concerns, such as divestiture or licensing.").

¹⁹ *Id.* at 19987 ("In order to find that a merger is in the public interest, we must . . . be convinced that it will enhance competition. A merger will be pro-competitive if the harms to competition . . . are outweighed by the benefits that enhance competition. If the applicants cannot carry this burden, the applications must be denied.").

analytical approach in the *Bell Atlantic/NYNEX Order* indicates that the relevant markets currently include local MVPD markets. In the *Bell Atlantic/NYNEX Order*, the Commission stated that it should define a relevant product market as a service or group of services for which there are no close demand substitutes.²⁰ Specifically, the Commission must consider whether, if, in the absence of regulation, all service providers raised the price of a particular service or group of services, customers would be able to switch to a substitute service offered at a lower price.²¹ If so, the substitute service should be included in the relevant market.

Application of this approach suggests that both DBS and cable currently are part of an overall MVPD market. Fundamentally, DBS providers, cable operators, and other MVPDs, offer consumers the same product – access to multichannel video programming. Although DBS currently differs from cable service in certain respects,²² these differences appear to be declining in significance, and may soon be irrelevant, because of technological developments, changes in market structure, and legislative initiatives. In addition, despite these differences, DBS operators have directly targeted cable television

²⁰ *Bell Atlantic/NYNEX*, 12 FCC Rcd at 20014. See also *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area*, Second Report and Order, CC Docket No. 96-61, FCC 97-142 (rel. April 18, 1997) ("*LEC Classification Order*"). In *Bell Atlantic/NYNEX*, the Commission noted that its approach was consistent with the *Merger Guidelines*, which state that "market definition focuses solely on demand substitution factors, i.e., possible consumer responses." *Bell Atlantic/NYNEX*, 12 FCC Rcd at 20014-15 (quoting 1992 *Horizontal Merger Guidelines*, 4 Trade Reg. Rep. (CCH) at 20,571).

²¹ See *Bell Atlantic/NYNEX*, 12 FCC Rcd at 20015.

²² DBS, for example, offers subscribers certain advantages over cable television, such as greater channel capacity and higher picture quality. At the same time, however, DBS currently is unable to provide local broadcast signals, and requires significantly higher up-front equipment and installation costs than does cable. In addition, DBS subscribers must purchase additional equipment to receive service on additional television sets.

in national advertising campaigns designed to increase their market share.²³ Moreover, a substantial number of potential cable subscribers are preferring instead to subscribe to DBS because of their dissatisfaction with the services offered by incumbent cable operators.²⁴ Incumbent cable operators have themselves acknowledged that DBS currently competes directly with cable television for subscribers, and that DBS competition has forced cable to offer better services to consumers.²⁵ And, as the distinctions between cable and DBS continue to diminish, the cross-elasticity of demand between cable and DBS can only be expected to increase. Because a significant number of subscribers would likely switch to other sources of multichannel video programming, including DBS, if cable operators were to raise their rates significantly, the Commission should conclude that both DBS and cable compete in a single, broadly defined MVPD product market, and consider the effects of any transaction involving DBS ownership issues on MVPD competition, if the Commission decides to define relevant markets in which to assess DBS ownership issues in this proceeding.

Ameritech notes that this conclusion would be consistent with the Commission's previous finding that the relevant product market in which to analyze DBS ownership

²³ See e.g. *Marketing New Media*, Paul Kagan Associates, Inc. (March 16, 1998) (reporting that DIRECTV has initiated a marketing campaign aimed "at cable's jugular . . . launching a series of national TV commercials positioning it as a superior alternative to cable").

²⁴ *Id.* (noting that "[t]wo of every three new DIRECTV customers are coming from cable-passed areas").

²⁵ See *Erosion of Cable Subscribers to DBS has Ended, TCI's Hindery Says*, *Communications Daily* (March 25, 1998) (quoting TCI President Leo Hindery as stating that the cable industry "is 'enormously grateful' for DBS success, which, he said, provided 'a much-needed wakeup call' for cable").

issues is the MVPD market.²⁶ It would also be consistent with Congress's focus on MVPD competition in the 1992 Cable Act, and its conclusion that, "[w]ithout the presence of another multichannel video programming distributor, a cable system faces no local competition."²⁷

In defining relevant geographic markets in which to assess DBS ownership issues, the Commission should again follow its approach in *Bell Atlantic/NYNEX*, and define the relevant geographic market as the region in which a hypothetical monopolist that was the only producer of the relevant product at locations in that region could profitably increase its prices, holding constant the terms of sale for all products produced elsewhere.²⁸ Under this approach, if consumers would respond to a price increase by shifting purchases to a different location, thereby making the price increase unprofitable, the second location should be included in the same geographic market.

Because consumers can view video programs at only one location at any given time, video services offered in other locations will have no effect on consumers' viewing choices. Accordingly, the area of overlap of various service providers determines the potential MVPD choices available to a given consumer, and constitutes the relevant geographic market in which to assess MVPD competition. Consequently, if the

²⁶ See *Fourth Competition Report*, FCC 97-423 at para. 123; *DBS Auction Order*, 11 FCC Rcd at 9726 ("The comments reflect general agreement with our conclusion that the market for the delivery of video programming – the market in which MVPDs compete – is the relevant product market.") (citing, *inter alia*, the comments of the U.S. Department of Justice).

²⁷ H.R. Rep. No. 102, 102d Cong., 2d Sess. § 2 (1992) (noting that "[t]he result is undue market power for the cable operator as compared to that of consumers and video programmers").

²⁸ *Bell Atlantic/NYNEX*, 12 FCC Rcd at 20016-17; *LEC Classification Order*, FCC 97-142 at para. 64 (citing the 1992 *Merger Guidelines*).

Commission decides to define relevant markets in which to assess DBS ownership issues in this proceeding, it should define such markets to include local markets (that is, the areas of overlap of various service providers) for the delivery of multichannel video programming.

The next step in the Commission's competitive analysis is to identify the current and potential participants in each relevant market, especially those likely to have a significant competitive effect on the market. As discussed above, the Commission should analyze DBS ownership issues on a case-by-case basis, making it impossible to identify in advance all of the current and potential market participants in each relevant local MVPD market. Nevertheless, it is clear that the market participants will, at a minimum, include the incumbent cable operator and DBS providers capable of offering service in the incumbent's local service area. Such market participants would also plainly include other new entrants, like Ameritech, to the extent they offer service in the relevant markets.

- ii. Any transaction that combines an incumbent cable operator with a DBS operator will likely impede competition in local MVPD markets.

The third step in the Commission's analysis is to evaluate the effects a proposed transaction may have on competition in the relevant markets. The Commission should, therefore, assess the effects of any transaction affecting DBS ownership on local MVPD markets, and, in particular, the ability of DBS providers and other new entrants, like Ameritech, to provide meaningful competition to incumbent cable operators. Because local markets for the delivery of multichannel video programming remain highly concentrated, and dominated by incumbent cable operators, any combination between an

incumbent cable operator and a DBS provider will likely have significant anticompetitive effects that may outweigh any potential efficiency gains or other procompetitive effects resulting from the transaction.

In particular, a DBS operator that is affiliated with an incumbent cable operator is likely to have significantly different economic incentives than would a DBS operator that is unaffiliated with cable systems. Unaffiliated DBS operators will likely compete vigorously with incumbent operators and offer services and set prices in a way that will maximize their profits from the provision of DBS services. By contrast, a DBS operator that is affiliated with an incumbent cable operator may have an incentive to coordinate its services and set its prices in a way that will maximize the combined profits of the DBS operator and its cable affiliate, and, therefore, to maintain its cable affiliate's monopoly profits.²⁹ Consequently, permitting a DBS provider to integrate with an incumbent cable operator would likely eliminate the DBS provider from any form of competition with the incumbent operator, whether by *de novo* entry, acquisition of a smaller, existing entrant, or through a joint venture with another new entrant, and thus limit competition in already concentrated MVPD markets.

Moreover, rather than vigorously competing against the incumbent cable operator, a cable-affiliated DBS operator may market its service as a complement to its cable-affiliate's basic service. That is, a cable-affiliated DBS operator may only offer premium programming, requiring its subscribers to continue to subscribe to its cable-

²⁹ Indeed, a cable-affiliated DBS operator will likely compete against its cable affiliate only to the extent necessary to prevent cable subscribers from defecting to another new entrant, such as a cable overbuilder like Ameritech, or a non-affiliated DBS provider.

affiliate to obtain local and basic cable programming services. Such a plan would not only neutralize DBS as a potential competitor to incumbent cable operators, but also further entrench the incumbent cable operator. Moreover, such a plan may also give the incumbent cable operator a competitive advantage over other new entrants in the delivery of other, advanced services (such as internet, cable modem and other broadband services) by permitting the incumbent to shift high bandwidth video services to DBS, and thereby recover bandwidth to use in the provision of other advanced services. As a result, incumbent cable operators affiliated with DBS providers may have significantly less incentive to invest in new, high bandwidth technologies and facilities.

Moreover, permitting an incumbent cable operator to vertically integrate with a DBS provider would not only eliminate the DBS provider as a potential competitor to the incumbent, but also could limit the ability of other new entrants (like Ameritech) to compete with the incumbent cable operator by, for example, encouraging programmers that are vertically integrated with the DBS provider to discriminate against, or to refuse to provide popular, quality programming to, such new entrants, impairing their ability to create attractive programming packages. The anticompetitive effect on MVPD markets of such a denial of programming could be significantly greater than the elimination of the DBS provider as a potential competitor to the incumbent, in light of the demonstrated ability of certain new entrants, like Ameritech, to offer meaningful, robust competition to incumbent cable operators. In this regard, Ameritech observes that, in markets where it has entered, incumbent providers have significantly reduced their rates, even where they

have upgraded the channel capacity of their systems.³⁰ Due to the limitations of the Commission's existing program access rules, such anticompetitive conduct might not be remediable.

In addition, allowing a DBS provider to affiliate with a vertically integrated cable operator may encourage the cable operator's programming affiliate to engage in "benchmarking" to minimize competition to the incumbent cable operator from unaffiliated DBS providers. That is, a cable-affiliated programmer could sell programming to the affiliated DBS operator at rates higher than those charged to its cable affiliate, and invoke the premium paid by the DBS-affiliate as justification for charging higher prices to other, unaffiliated DBS operators, thereby increasing their costs, and undermining their ability to offer a competitive alternative to the incumbent.

Any combination between an incumbent cable operator and a DBS provider would, therefore, likely have significant anticompetitive effects by removing assets that could otherwise be used to enhance competition and consumer choice in local MVPD markets, and by enabling the incumbent, its DBS affiliate, and their affiliated programming vendors, to engage in various tactics that could limit the ability of other new entrants to compete effectively with the incumbent. Such a combination would, moreover, be unlikely to achieve procompetitive benefits or efficiencies that could not be achieved through other, less anticompetitive means. Accordingly, the Commission should scrutinize closely any combination or affiliation between an incumbent cable operator and a DBS provider capable of serving the cable operator's local service area to

³⁰ See Letter from Gary R. Lytle, Vice President, Federal Relations, Ameritech, to William E. Kennard, Chairman, Federal Communications Commission, January 29, 1998 (attached).

determine whether, on balance, the anticompetitive effects of such a combination or affiliation are clearly outweighed by any purported, transaction-specific benefits or efficiencies. If not, the Commission should prohibit the combination or affiliation.

Nevertheless, Ameritech recognizes that there may, in rare instances, be situations in which combinations between an incumbent cable operator and a DBS operator may benefit consumers.³¹ Accordingly, the Commission should retain regulatory flexibility, and continue to review such combinations on a case-by-case basis to determine whether their anticompetitive effects are outweighed by merger-specific benefits that enhance competition and consumer choice in local MVPD markets.

- iii. The procompetitive efficiencies of any proposed transaction that combines a DBS operator with another new entrant will likely outweigh any anticompetitive effects.

In contrast to combinations between incumbent cable operators and DBS providers, combinations between new entrants and DBS operators are likely to result in significant procompetitive benefits that will enhance competition and consumer choice in local MVPD markets. In particular, such combinations will likely enable the parties to achieve greater efficiencies and economies of scale, and, therefore, to reduce their costs significantly. Such combinations could also allow the parties to create attractive packages of video and other telecommunications services. In addition, by permitting the parties to combine their resources, such combinations would better enable the parties to withstand early financial losses that are typical when entering new markets. Moreover,

³¹ For example, in small, rural communities that would be unlikely to attract competitive entry, such a combination might benefit consumers by enabling them to receive a significantly greater number of premium channels through DBS while still obtaining local channels from the incumbent cable operator.

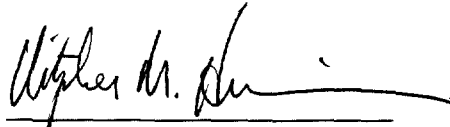
such combinations are unlikely to produce any significant anticompetitive effects. Thus, while the Commission should also review such combinations on a case-by-case basis, it should presume that they are pro-competitive.

III. Conclusion.

Based on the foregoing, the Commission should decline to adopt rules governing DBS ownership and cross-ownership with other entities, and retain regulatory flexibility to address specific competition and public interest issues related to DBS ownership on a case-by-case basis. In analyzing such issues, the Commission should follow the approach adopted in the *Bell Atlantic/NYNEX* decision. If the Commission decides to define the relevant markets in which to analyze DBS ownership issues in this proceeding, it should conclude that local markets for multichannel video programming distribution are such relevant markets. In addition, because local cable markets remain highly concentrated, the Commission should scrutinize closely any affiliation between an incumbent local cable operator and a DBS provider to determine whether, on balance, the anticompetitive effects of such an affiliation are outweighed by any transaction-specific procompetitive benefits. If not, it should prohibit such transactions. At the same time,

the Commission can generally presume that combinations or transactions between a DBS operator and another new entrant will, on balance, be procompetitive.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Christopher M. Heimann", written over a horizontal line.

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April 6, 1998

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January 29, 1998

Gary R. Lytle
Vice President -
Federal Relations

The Honorable William E. Kennard,
Chairman
Federal Communications Commission
1919 M Street, NW
Room 814
Washington, DC 20554

Dear Chairman Kennard:

I am writing in support of your view that the development of robust competition in the video program delivery market requires legislation. You observed as part of the Commission's recent report In the Matter of Annual Assessment of the Status of Competition in the Markets for the Delivery of Video Programming that "...enhanced competitive opportunities depend more upon changes in the law than on additional regulatory action". In particular, you noted that uncertainty currently exists regarding the Commission's statutory authority to remedy problems related to program access. Continued uncertainty only prolongs conduct in the marketplace impeding access to programming, which either inhibits the development of meaningful competition or prevents competitive entry altogether. Ameritech urges the Commission to seek expeditiously the appropriate legislative relief necessary to remove this uncertainty and thereby facilitate meaningful competition.

The Commission has recognized the lack of widespread competition in the cable industry and that cable rates have increased 8.5% in the twelve month period ending July 1997. While the Commission should be duly concerned over the rise in cable rates, the most effective remedy rests in assuring that meaningful competition can develop and grow. There is no doubt that real competition will mean lower prices and increased choices for consumers. Ameritech New Media (ANM) has obtained sixty-five cable franchises and, as the largest cable overbuilder in this country, seeks to provide sustained and meaningful competition to the incumbent cable industry. Even though ANM is a relatively new entrant, it is clear that the prospect of meaningful competition has a significant effect both on the incumbent's prices and on its conduct in the marketplace.

The Honorable William E. Kennard

January 29, 1998

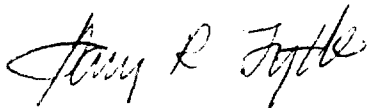
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In the Commission's recent Report on Cable Industry Prices (MM Docket 92-266) only 4% of the "competitive communities" referenced therein had competition from an overbuilder. No territory served by Ameritech New Media was included in the Commission's sampling. Had it been, I believe the impact of overbuilders' entry on cable rates would have proven to be more significant. The potential for meaningful competition is far greater than the results of the Commission's overall sampling methodology would suggest. The attached chart is illustrative of the extent to which ANM's competitive entry has already affected incumbent's prices and behavior to the benefit of consumers. In markets ANM has entered, the incumbent cable provider has significantly reduced the overall price of its service. This has occurred even where the incumbent has upgraded the channel capacity of its system.

Competition in the delivery of video programming historically has not yielded reductions of such a magnitude in prices charged by incumbent cable providers. Even the much heralded competition from Direct Broadcast Satellite (DBS) service has not served to restrain in any meaningful way prices charged. The attached information strongly suggests that a cable system overbuilder such as ANM is perceived by the incumbent provider as posing the greatest competitive threat as evidenced by their competitive responses. The Commission should take all necessary steps to ensure the development and growth of competition from cable system overbuilders.

ANM's overbuild experience demonstrates that the mere potential for meaningful competition will significantly reduce cable rates. But the prospect for meaningful competition becoming a reality on a sustained and widespread basis will only materialize if current uncertainties surrounding reasonable access to programming are removed. Ameritech is encouraged by your candor and recognition of the need for legislation in this area.

Best Regards,



Gary Lytle
Vice President - Federal Relations

Attachment

cc: Commissioner Ness
Commissioner Furchtgott-Roth
Commissioner Powell
Commissioner Tristani
Meredith Jones, Chief, Cable Services Division

Examples of Competitive Response To Ameritech Market Entry

Competitor	Before Ameritech New Media's Entry	After Ameritech New Media's Entry	Adjacent Non-Competitive Community Served by Incumbant
Time Warner	Wayne, MI Expanded Basic \$23.95 Disney \$11.45 Regional Sports \$13.95 Premiums \$12.95 <u>Converter/remote \$3.37</u> Total Package \$65.67	Wayne, MI Added 17 channels Expanded Basic \$22.81 (incl. Disney & Regional Sports) Premiums \$9.95 <u>Converter/remote \$2.95</u> Total Package \$35.71	Farmington, MI Nearly Identical Lineup Expanded Basic \$29.02 (incl. Regional Sports) Disney \$8.95 Premiums \$8.95 <u>Converter/remote \$2.40</u> Total Package \$49.32
Cablevision	Berea/North Olmsted, OH Expanded Basic \$19.63 Disney \$10.45 <u>Premiums \$10.45</u> Total Package \$40.53 Tyson/Holyfield fight \$49.95	Berea/North Olmsted, OH Added 20 channels Expanded Basic \$21.95 (incl. Disney) <u>Premiums \$9.95</u> Total Package \$31.90 Tyson/Holyfield fight Free	Strongsville, OH 18 less channels Expanded Basic \$23.44 Disney \$10.45 <u>Premiums \$9.95</u> Total Package \$43.84 Tyson/Holyfield fight \$49.95
Media One	Canton, Plymouth, MI Expanded Basic \$21.79 Disney \$9.69 Regional Sports \$11.95 <u>Premiums \$9.69</u> Total Package \$53.12	Canton, Plymouth, MI Added 20 channels Expanded Basic \$22.95 (incl. Disney & Regional Sports) <u>Premiums \$9.69</u> Total Package \$32.64	Ann Arbor, MI Nearly identical lineup Expanded Basic \$26.75 (incl. Disney & Regional Sports) <u>Premiums \$9.69</u> Total Package \$36.44

Before = Prior to the competitive response to Ameritech New Media's launch
After = There is a competitive response either immediately before Ameritech New Media's launch in a market or a few months following.

Examples of Competitive Response To Ameritech New Media Entry

Competitor	Before Ameritech New Media's Entry	After Ameritech New Media's Entry	Adjacent Non-Competitive Community Served by Incumbant
TCI	Royal Oak, MI Expanded Basic \$32.23 Equip \$3.30 Disney \$10.45 Regional Sports \$12.95 Premiums \$14.95 T²total Package \$73.88	Royal Oak, MI Expanded Basic \$28.95 1st Equip Free Indefinitely (Incl. Disney and Regional Sports) Premiums \$10.45 Total Package \$39.40	Rochester, MI Identical Lineup Expanded Basic \$32.23 Equip \$3.30 (Incl. Disney and Regional Sports) Premiums \$10.45 Total Package \$45.98
TCI	Lincoln Park, MI Expanded Basic \$25.32 Equip \$3.30 Disney \$10.90 Regional Sports \$10.90 Premiums \$14.95 Total Package \$65.37	Lincoln Park, MI Added 13 channels Expanded Basic \$23.95 1st Equip Free Indefinitely (Incl. Disney and Regional Sports) Premiums \$10.45 Total Package \$34.40	Gibraltar, MI Nearly identical lineup Expanded Basic \$26.01 Equip \$3.30 (Incl. Disney and Regional Sport) Premiums \$10.45 Total Package \$39.76
Comcast	Southgate, MI Expanded Basic \$24.05 Disney \$12.95 Regional Sports \$12.95 Premiums \$11.95 Total Package \$61.90	Southgate, MI Added 16 channels Expanded Basic \$23.95 (Incl. Disney and Regional Sports) Premiums \$12.95 Total Package \$36.90	Grosse Isle, MI Nearly Identical Lineup Expanded Basic \$27.06 (Incl. Regional Sports) Disney \$ 7.95 Premiums \$12.95 Total Package \$47.96

• **Before** = Prior to the competitive response to Ameritech New Media's launch

After = There is a competitive response either immediately before Ameritech New Media's launch in a market or a few months following.

Examples of Competitive Response To Ameritech New Media Entry

Competitor	Before Ameritech New Media's Entry	After Ameritech New Media's Entry	Adjacent Non-Competitive Community Served by Incumbant
Comcast	<p>Melvindale, MI</p> <p>Expanded Basic \$25.95 <u>Disney \$12.95</u> Total Package \$38.90</p> <p>Starter Pack - Expanded Basic, Equip, HBO,2,3, Encore for \$43.95</p>	<p>Melvindale, MI</p> <p>Added 31 Channels</p> <p>Expanded Basic \$25.95 <u>(incl. Disney)</u> Total Package \$25.95</p> <p>Starter Pack - Expanded Basic, Equip, HBO,2,3, Encore for \$29.95</p>	<p>Harper Woods, MI</p> <p>Nearly Identical Lineup</p> <p>Expanded Basic \$27.95 <u>Disney \$12.95</u> Total Package \$40.90</p> <p>Starter Pack - Expanded Basic, Equip, HBO,2,3, Encore for \$39.95</p>
Coaxial	<p>Columbus, OH</p> <p>Expanded Basic \$29.61 Disney \$6.95 <u>TCM \$11.95</u> Total Package \$48.51</p>	<p>Columbus, OH</p> <p>Added 9 channels</p> <p>Expanded Basic \$26.40 <u>(incl. Disney & TCM)</u> Total Package \$26.40</p>	<p>Whitehall*, OH</p> <p>Identical Lineup</p> <p><u>Expanded Basic \$26.40</u> <u>(incl. Disney & TCM)</u> Total Package \$26.40</p> <p>*ANM is near completion of franchising discussions with Whitehall.</p>

Before = Prior to the competitive response to Ameritech New Media's launch

After = There is a competitive response either immediately before Ameritech New Media's launch in a market or a few months following.